

Agenda Item Form

Agenda Date: Aug. 31, 2004

Districts Affected: 1

Dept. Head/Contact Information: Irene Ramirez, P.E., Interim City Engineer Ext. 4422/Bashar Abugalyon, P.E., Interim Assistant City Engineer Ext. 4157

Type of Agenda Item:

- | | | |
|---|---|--|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input checked="" type="checkbox"/> Other <u>Conditional 'B' Building Permits</u> | | |

Funding Source:

- ☐ General Fund
☐ Grant (duration of funds: _____ Months)
☐ Other Source: _____

Legal:

- ☐ Legal Review Required Attorney Assigned (please scroll down): None ☐ Approved ☐ Denied

Timeline Priority: ☐ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

Requested by: RPW DEVELOPMENT LTD.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

No costs

Statutory or Citizen Concerns:

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits
River Park West Subdivision Unit Two

Departmental Concerns:

Department recommends approval

04 AUG 26 AM 10:51

Date: August 23, 2004

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the Council Meeting of:
August 31, 2004.

Item should read as follows:

Discussion and action on approval of Conditional "B" building permits for:

River Park West Subdivision Unit Two (District 1)

Special Instructions: ENGINEERING DEPARTMENT FOR INFORMATION
CONTACT INTERIM ASSISTANT CITY ENGINEER BASHAR ABUGALYON, P.E.
AT 541-4157.

City Clerk's Use

Action Taken: _____ Item No. _____

ENGINEERING DEPARTMENT

Development Division

DATE: August 23, 2004

TO: Mayor & City Council

FROM: Bashar Abugalyon, P.E., Development Division Chief Engineer *BA.*

SUBJECT: Conditional "B" Building Permits
River Park West Subdivision Unit Two (District 1)

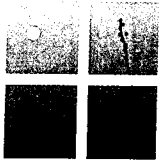
The above referenced request is scheduled for City Council Regular Agenda on August 31, 2004. The purpose of this memorandum is to provide you with general information concerning this request.

Under the City Building and Administrative Code, Section 18.02.103.1.1.6, developer may obtain building permits for up to 25% of the lots before all of the required subdivision improvements have been completed and accepted by the City. These are commonly called, "unconditional permits". "Conditional A" permits are permitted for the next 25% (up to 50% of the total) of lots. To obtain "Conditional A" permits, the developer must provide water and sewer service, curbing (but not street paving), drainage facilities, etc., necessary for the site in question. The developer must additionally provide a signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be signed until all of the improvements affecting that lot have been completed and approved by the City.

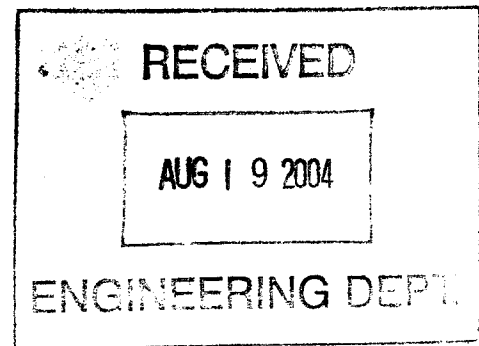
Lastly, "Conditional B" permits may be issued if the developer complies with all of the "Conditional A" requirements and obtains permission from the City Council. In order for the City Council to grant such permission, the Council must make a finding, "...that additional permits should be issued based upon economic hardship or public benefit demonstrated by the subdivider".

At this hearing, then, the City Council should hear testimony or other evidence from the developer that justifies allowing more permits to be issued before all of the needed improvements have been accomplished, before deciding the issue.

If I can be of any further assistance regarding this matter, please don't hesitate to contact me at extension 4157.



August 17, 2004



VIA FAX &
REGULAR MAIL

Mr. Bashar Abugalyon, P.E.
Interim City Engineer
City of El Paso – Engineering Department
2 Civic Center Plaza, Fourth Floor
El Paso, Texas 79901

RE: River Park West Subdivision Unit Two
Conditional Building Permit B Request

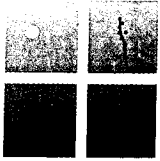
Dear Mr. Abugalyon:

On August 12th, City staff conducted a walkthrough of the subdivision in order to process the request for acceptance of the subdivision improvements. A punch list was developed and as of this date many of the items have been repaired. However, due to the recent rain we are unable to properly complete some of the repairs to the curb and pavement.

As we have discussed with staff, fifty percent of the permits have been issued in the subdivision and we will need additional permits beginning in September. Due to the likelihood of continued rain, we may not be able to complete the repairs, have them re-inspected and submitted to City Council in August. Therefore, in accordance with Section 18.02.103.1.1.6.1 of the El Paso Municipal Code, please accept this letter as a request for issuance of Conditional B building permits for the above referenced subdivision located in City Council Representative District One.

We respectfully ask that this request be forwarded to Council no later than the last Tuesday of the month of August, based on the finding that there is an economic hardship to the subdivider and a public benefit to the City, and approve this request so that the building permits should be issued.

The developer has complied with the Code requirements and has installed water and sewer service, curbing, and drainage. In fact, as stated above, we are just a few weeks away from completion. I have enclosed a file marked copy of the Development Agreements between the developer and builders for your information.



Mr. B. Abugalyon, P.E.
August 17, 2004
Page Two

Without these building permits there would be a hardship imposed on the builders, as there are contracts that they must comply with and failure to do so would result in penalties. In addition to the economic hardship that would be imposed if the permits were not issued, there is a public benefit to develop raw land and provide homes to our community and increase the tax base.

Please call me if I may provide further assistance. Thank you for your time in this matter.

Sincerely,

Cindy J. Crosby
RPW Development, LTD.

Enclosure

Cc: Jorge Azcarate, CEA Engineering Group (w/o enclosure)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 3 day of JUNE, 2004, by and between **RPW DEVELOPMENT LTD.** (hereinafter referred to as "Developer"), a Texas Limited Partnership, and **ZIA HOMES INC.** (hereinafter referred to as "Applicant"), a Texas corporation, or the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of **RIVER PARK WEST SUBDIVISION UNIT TWO**, a subdivision in the City of El Paso, El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso Municipal Code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for the good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (1) water and sewer services, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director of Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
 - A. **An Unconditional Building Permit** may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
 - B. **A Conditional "A" Building Permit** may be issued for the next twenty-five (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement within the Clerk of El Paso, County Texas; and
 - C. **A Conditional "B" Building Permit** may be issued for the remaining lots within the subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Application execute and file this Agreement with the Clerk of El Paso County, Texas.



TRUE AND CORRECT COPY OF THE ORIGINAL RECORD FILED IN
EL PASO COUNTY TEXAS *Waldo Alarcon*
WALDO ALARCON, COUNTY CLERK

3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion an acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the subdivision improvements.
4. **Certificate of Occupancy.** Declarant and Applicant acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "a" Building Permits, the Subdivision has been approved for acceptance by the Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements if the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for the Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
6. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

Developer:

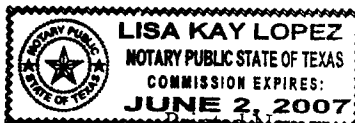
By: Randal S. O'Leary
RPW Development Ltd.

Applicant:

By: [Signature]
Zia Homes Inc.

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 20 day of May, 2004, by Randal S. O'Leary, on behalf of RPW DEVELOPMENT LTD., Texas limited partnership.



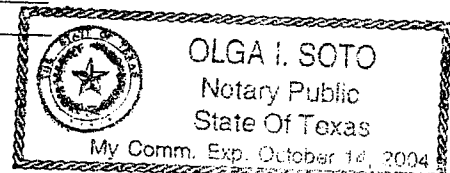
[Signature]
Notary Public for the State of Texas
Printed Name: Lisa Kay Lopez
My Commission Expires: June 2, 2007

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 20th day of May, 2004, by Ronald Costa, on behalf of ZIA HOMES INC.

[Signature]
NOTARY PUBLIC FOR THE STATE OF TEXAS

Printed Name: Olga I Soto
My Commission Expires: 10-14-04



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 12th day of February, 2004, by and between **RPW DEVELOPMENT LTD.** (hereinafter referred to as "Developer"), a Texas Limited Partnership, and **DESERT VIEW HOMES INC.** (hereinafter referred to as "Applicant"), a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of **RIVER PARK WEST SUBDIVISION UNIT TWO**, a subdivision in the City of El Paso, El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso Municipal Code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for the good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (1) water and sewer services, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director of Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
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 - C. **A Conditional "B" Building Permit** may be issued for the remaining lots within the subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Application execute and file this Agreement with the Clerk of El Paso County, Texas.

UNRECORDED
2004

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3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion an acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the subdivision improvements.
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5. **Release.** Upon satisfactory completion and acceptance of the required public improvements if the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for the Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
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This Agreement is executed to be effective on the date and year first set forth above.

Developer:

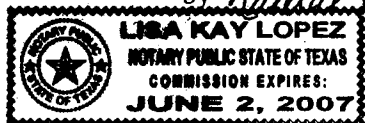
Applicant:

By: [Signature]
RPW Development Ltd.

By: [Signature]
Desert View Homes Inc.

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 13 day of February, 2004,
by Randal S. Olivas, on behalf of RPW DEVELOPMENT LTD., Texas limited partnership.

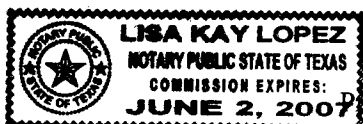


[Signature]
NOTARY PUBLIC FOR THE STATE OF TEXAS

Printed Name: Lisa Kay Lopez
My Commission Expires: June 2, 2007

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 13 day of February, 2004,
by Jerisa Kemp, on behalf of DESERT VIEW HOMES INC.



[Signature]
NOTARY PUBLIC FOR THE STATE OF TEXAS

Printed Name: Lisa Kay Lopez
My Commission Expires: June 2, 2007